

APPENDIX D

EXEMPT UNDERTAKINGS

INTRODUCTION

Undertakings listed in this Appendix to the Protocol may be exempt (categorically excluded) from further review or consultation under the terms of this Protocol at stipulation V.G. The listed classes of undertakings are subdivided into Class A and Class B activities, which vary by the degree of review required of the Field Office Cultural Resource staff.

Class A Activities

Class A activities are generally exempt but may require a records check to determine whether the activity may affect a known historic property or an unevaluated cultural resource. Cultural Resource staff shall determine whether a records check is appropriate and shall conduct that check prior to exempting the activity. A Field Office may elect to provide further and more robust review, including field inventory, by Field Office Cultural Resource staff if that staff determines that a specific exempt undertaking may affect a cultural resource which is significant, documented, known but not recorded, or unevaluated.

Class A activities submitted for further review shall be documented and reported in annual reports. Class A exemptions which are not submitted for further review shall be documented in project case files in order to demonstrate compliance with Section 106 of NHPA using an appropriate exemption tracking form.

Class B Activities

Class B activities may be exempt, depending on a finding by professional Field Office Cultural Resource staff. The screening of potentially exempt Class B activities shall consider the nature of the proposed activity, adequacy of prior inventory, adequacy of documentation of historic properties and inventory efforts, information or knowledge of potentially affected cultural resources which were unknown at the time of the original inventory, and the nature or scope of any prior Section 106 review.

If the Field Office Cultural Resource staff determines that an undertaking may be treated as exempt, then that undertaking shall be considered exempt under this Protocol and no further review or consultation would be required. If Field Office Cultural Resource Staff determines that an undertaking has an effect, may have an effect, or will continue an on-going effect, the undertaking shall not be exempt and shall be subject to the provisions of this Protocol or 36 CFR 800, as appropriate.

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1 Class B reviews shall be documented on an appropriate exemption tracking form and
2 reported in annual reports.

3 4 **Inadvertent Discoveries during Implementation of an Exempted Undertaking**

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6 In the event of inadvertent discovery of cultural resources during implementation of an
7 undertaking which has been exempted under Appendix D, the following procedure shall
8 be undertaken. Field Office Cultural Staff and the Field Office Manager shall be
9 immediately notified by personnel responsible for implementation of the exempted
10 undertaking. All work shall cease at the site of discovery and all other work which may
11 damage the cultural resource shall also cease. The Field Office Cultural Staff shall make
12 an assessment of the situation and, in consultation with the Field Office Manager, may
13 prescribe the emergency implementation of appropriate physical and administrative
14 conservation measures as enumerated in BLM Manual Series 8140. The Field Office
15 Cultural Staff shall notify the SHPO in order to develop an agreement on the appropriate
16 course of action, and such agreement shall reflect the intent of BLM Manual Series
17 8140.28B. The agreement shall be memorialized in writing and documented in project
18 files. The Field Office Cultural Staff shall document implementation of the agreed-upon
19 steps and shall report the discovery event and the manner of its resolution in the annual
20 accomplishment reporting required under this Protocol.

21 22 **Addition, Deletion or Modification of Exemptions**

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24 This list of exemptions may be changed through addition, deletion, or modification of
25 exemptions as described in stipulation V.I. of the Protocol. When the list of exemptions
26 is modified a new Appendix D shall be issued with its effective date entered on the face
27 of the Appendix. Upon issuance, all prior versions of Appendix D shall be superseded
28 and shall have no further force or effect. When a specific exemption is deleted, its
29 deletion shall be shown by striking through its text and, similarly, when terms in a
30 specific exemption are modified, the modified terms shall be denoted by strikethrough.

CLASS A ACTIVITIES

A1: Activities which involve no more than two (2) square meters of cumulative surface disturbance and no more than one (1) square meter of contiguous disturbance in any given location.

A2: Routine maintenance of existing facilities, including minor routine and preventative maintenance of BLM facilities which do not disturb additional ground surface area or historic properties **at the facility including the facility itself.**

A3: Rendering formal classification of Federal lands in the United States pursuant to 43 CFR 2400 (Formal Land Classification Procedures).

A4: Removal of log jams and debris dams using hand labor or small mechanical devices.

A5: Special land use designations which do not authorize surface disturbance including ACECs, Wilderness Study Areas, environmental education areas, and Natural Areas.

A6: Alteration of structures which are known to be less than 40 years old in their entirety.

A7: Removing modern materials and trash scatters less than 50 years old and not associated with a larger eligible or unevaluated cultural entity. Abandoned vehicles and modern trash dumps are included in this class.

A8: Withdrawal continuations or extensions which would only establish a specific time period and where there would be essentially no change in use and/or no new uses would be permitted and continuation would not lead to environmental degradation.

A9: Withdrawal terminations, modifications or revocations that, because of overlying withdrawals or statutory provisions, involve merely a record clearing procedure.

A10: Withdrawal terminations, modifications, or revocations and cancellations of classification and opening orders where the land would be opened to discretionary land laws and where future actions would be subject to review under the terms of this protocol.

A11: Withdrawal terminations, modifications or revocations and opening orders that the Secretary of the Interior is under a specific statutory directive to execute, and where future actions would be subject to review under the terms of this protocol.

A12: Transfer of use authorization from one Federal agency to another when an action such as a boundary adjustment necessitates changing a right-of-way from one federal agency to another (e.g., Forest Service Special Land Use Permit to a BLM Title V Right-of-Way).

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1 **A13:** Rights-of-way for overhead line (no pole or tower on BLM land) crossing over a
2 corner of public land.

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4 **A14:** Right-of-way which would add or remove another radio transmitter to an existing
5 communication site that is neither an historic property nor located on or within the
6 proximate area of an historic property.

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8 **A15:** Apiary sites adjacent to a designated road or route of travel and which do not
9 involve ground disturbance.

10
11 **A16:** Acquisition of lands and easements.

12
13 **A17:** Transferring lands or interest in lands to other Federal agencies where future
14 management will be subject to the Section 106 process.

15
16 **A18:** Cadastral survey.

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18 **A19:** Designating areas closed to vehicles or areas limited to travel only on existing roads
19 and trails where such designation does not require or involve Plans or Plan amendments,
20 and where access to traditional or sacred sites by Native Americans is not an issue.

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22 **A20:** Installation of routine signs or markers on shoulders of existing roads and markers
23 adjacent to existing roads, or placing recreational, special designation or information
24 signs, or visitor registers, unless within known historic properties. Disturbance cannot
25 exceed the restrictions set forth in Exemption A1.

26
27 **A21:** Issuance and modification of regulations, orders, standards, notices to lessees and
28 operators and field rules where the impacts are obviously limited to administrative,
29 economic or technological effects.

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31 **A22:** Approval of off-lease storage in existing facilities.

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33 **A23:** Approval of suspensions of operations and suspensions of production.

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35 **A24:** Approval of royalty determinations such as royalty rate reduction and operations
36 reporting procedures.

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38 **A25:** Approval of conversion of an existing oil and gas well for disposal of produced
39 water meeting the standards of NTL-28, when no new ground disturbance will result.

40
41 **A26:** Approval of conversion of an unsuccessful oil and gas well or an exhausted
42 producer to a water source or observation well when no new ground disturbance will
43 result.

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45 **A27:** Routine downhole fracturing of rock formation to enhance production or injection.

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1 **A28:** Operations in, and reclamation of, existing materials borrow sites when the activity
2 is entirely within the disturbed area.

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4 **A29:** Administratively determining that land is mineral in character.

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6 **A30:** Continued development of borrow sources which have previously removed all
7 Holocene and Pleistocene sediments and will not extend into any area which contains
8 Holocene and Pleistocene sediments.

9
10 **A31:** Dispersed non-commercial recreation activities such as rock collection, Christmas
11 tree cutting, pine nut gathering, and personal use fuelwood.

12
13 **A32:** Issuance of special recreation permits:

14
15 **a.** River use permits where camping and put-in/take-out sites are established facilities
16 where previous Section 106 consultation has been completed.

17
18 **b.** Long-term visitor use permits in established Long Term Visitor Areas for which
19 previous Section 106 consultation has been completed.

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21 **A33:** Placement of recreational, special designation or information signs, visitor
22 registers, portable kiosks and portable sanitation devices.

23
24 **A34:** Modification of existing fences, gates, grills, or screens to provide improved
25 wildlife ingress and egress where such modification does not affect the integrity of
26 potentially historic adits, stopes, or shafts.

27
28 **A35:** Reintroduction of endemic or native animal species into their historical habitats
29 where no ground-disturbing facilities will be constructed.

CLASS B ACTIVITIES

B1: Repair or stabilization of historic properties using in kind workmanship and materials.

B2: Emergency repair or stabilization of historic properties using methods that do not have an effect upon the values that make the properties significant.

B3: Resource management actions which do not utilize motorized vehicles or create new surface disturbance and that do not have the potential to affect access to or use of resources by American Indians.

B4: Hazards abatement, including elimination of toxic waste sites, filling, barricading, or screening of abandoned mine shafts, adits, and stopes where such features are not historic or contributing properties.

B5: Removal of, recent (less than 50 years old) structures and materials not associated with older remains which may qualify for listing in the National Register and where no historic properties will be affected.

B6: Limited archaeological testing and/or artifact collection during field identification, evaluation, and recording activities, so that the significance or research potential of a cultural property may be better understood but not substantially diminished. Limited testing is defined as affecting no more than four (4) cubic meters of an archaeological deposit or more than 25% of the surface area of the deposit.

B7: ~~Fire applications~~ Wildland fire use or prescribed burns which will have no effect on historic properties, which do not disturb structures, or might affect rock art, or require disturbance of the ground surface (cutting line, dozer work, fire breaks, fire regarding drops, helipads, etc.), or adversely affect access or use by California Indians to harvest or gather traditionally used plant materials.

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B8: Wildfires, including initial attack, where suppression activities have required no mechanical disturbance of the surface of the ground, including surfaces which may contain prehistoric art, and where no structures have been disturbed.

B9: Issuance of permits, leases, and rights-of-way where no surface or resource disturbance is authorized, that have no potential for adverse effects, and that do not have the potential to affect access to or use of resources by American Indians.

B10: Designation of existing transportation and utility corridors under Section 503 of FLPMA when current BLM information indicates that such corridors have low probability of containing or being in proximity to historic properties.

B11: Activities at designated communication sites that do not affect historic properties and where Section 106 consultation has been previously completed.

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- 1 **B12:** Approval of minor modifications to or minor variances from activities described in
2 an approved mineral exploration plan that does not affect historic properties.
3
- 4 **B13:** Approval of minor modifications to or minor variances from activities described in
5 an approved underground or surface mining plan of operations that does not affect
6 historic properties for which previous Section 106 consultation has been completed.
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- 8 **B14:** Seismic operations on maintained roads or trails, and those involving no use of
9 explosives, grading, or other land modifications, and resulting in no appreciable
10 disturbance or compaction of vegetation, soils, or desert pavement by vehicle movement
11 or other means, in areas in which previous Section 106 consultation has been completed.
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- 13 **B15:** The removal of oil well stand pipes where there is no other evidence of historic or
14 archaeological remains.
15
- 16 **B16:** Approval of Application of a Permit to Drill (APD) or applications for rights-of-
17 way for ancillary facilities within an established, utilized or developing oil and gas field
18 for which Section 106 consultation has been completed or that does not involve historic
19 properties.
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- 21 **B17:** Issuance of special recreation permits where permitted use is consistent with
22 planning decisions or OHV designations for which previous Section 106 consultation has
23 been completed, and where there will be no new surface disturbance.
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- 25 **B18:** Placement or removal of monitoring equipment (e.g., stream gauges) which does
26 not disturb potentially sensitive ground surface or historic properties or other cultural
27 resource.
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- 29 **B19:** Maintenance of roads that does not widen or otherwise extend surface disturbance,
30 unless archaeological features are exposed and which have not been evaluated.
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- 32 **B20:** Renewals or reassignment of land use authorization where the action conveys no
33 additional rights beyond those granted in the original authorization and where Section
34 106 consultation has been previously completed.
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- 36 **B21:** Upgrading or adding new lines (power or telephone) to existing pole(s) when there
37 is no change in pole configuration or number, and when the lines are not historic
38 properties and no other cultural resources issues are known.

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